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CH-91-08(F)

STEETLEY QUARRY PRODUCTS INC. SOUTH QUARRY LANDFILL
DEVELOPMENT DECISION AND REASONS FOR DECISION... 1993.

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The Joint Board THE CONSOLIDATED HEARINGS ACT, 1981

CH-91-08(F)

STEETLEY QUARRY PRODUCTS INC. SOUTH QUARRY LANDFILL DEVELOPMENT

DECISION AND REASONS FOR DECISION

IN THE MATTER OF the *Consolidated Hearings Act*, R.S.O. 1990, c. C.29, the *Environmental Assessment Act*, R.S.O. 1990 c. E.18, the *Environmental Protection Act*, R.S.O. 1990, c. E.19, the *Ontario Water Resources Act*, R.S.O. 1990, c. O.40, the *Planning Act*, R.S.O. 1990 c. P.13, the *Niagara Escarpment Planning and Development Act*, R.S.O. 1990, c. N.2, the *Intervenor Funding Project Act*, R.S.O. 1990, c. I.13;

- and -

IN THE MATTER OF a proposal by Steetley Quarry Products Inc. (Steetley) to establish, operate and close a solid waste disposal site on lands owned by Steetley, known as the South Quarry, located on Part of Lots 9, 10 and 11, Concession III, EHS, Town of Flamborough.

BEFORE:	A.D. Levy	-	Chair
	D.S. Colbourne	-	Member

DATED at TORONTO this 25th day of MARCH, 1993.

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BEFORE:	A.D. Levy	-	Chair
	D.S. Colbourne	-	Member

APPEARANCES:

John L. Martin	-	for the Proponent - Steetley Quarry Products Inc.
Cathy Spoel		
Russ Hughes		
Thomas R. Lederer	-	for the Regional Municipality of Hamilton-
Jan deP. Seaborn		Wentworth, and the Halton Region Conservation
Sopinka		Authority
Lee A. Pinelli	-	for the Town of Flamborough
Peter C. Pickfield	-	for Greensville Against Serious Pollution Inc. (GASP)
Alison Hall	-	for the Ministry of the Environment
Marianne Orr	-	for the Niagara Escarpment Commission

REASONS FOR DECISION

1. Introduction

This matter arises out of a proceeding before a joint board ("the Board") established under the *Consolidated Hearings Act* ("CHA") to deal with the various approvals sought by the proponent,

Steetley Quarry Products Inc. ("Steetley"), a business corporation, in connection with its proposal to establish, operate and close a new solid waste disposal site. The undertaking was designated under the *Environmental Assessment Act* ("EAA").

A funding panel ("the Panel") was appointed pursuant to the *Intervenor Funding Project Act* ("IFPA"), to determine applications for intervenor funding ("funding") made by the following parties: the Corporation of the Regional Municipality of Hamilton-Wentworth ("the Region"), the Hamilton Region Conservation Authority ("the Authority"), the Corporation of the Town of Flamborough ("the Town") and Greenville Against Serious Pollution Inc. ("GASP").

A funding hearing was held on February 16 and 17.

2. Background

The proponent, a business corporation, began to operate a dolomitic limestone quarry, located in the Town, in 1951. It is the owner of the property, described as part of lots 9, 10 and 11, Concession III, EHS ("the site"), which is located 6 km west of Clappison's Corners (the name for the intersection of Highway 5 and 6) and approximately 3 km from the face of the Niagara Escarpment ("the Escarpment"). The site, commonly referred to as the South Quarry, is situated above the Escarpment. The land use in the area is primarily agricultural, although there are some residential areas close to the site. As much of the argument during the funding hearing related to the nature of the undertaking and the character of the proponent, further detail about both is provided in this section.

A free-standing tunnel under Highway 5, built in 1960, connects the South Quarry, which is located on the north side of the highway, with an aggregate and lime kiln plant operated by the proponent on a property adjacent to and south of the highway. Another of the company's quarries, known as the North Quarry and located adjacent to and north-west of the South Quarry (and north of the 4th Concession), is now the primary source of stone for its aggregate and lime kiln plant, with the South Quarry producing construction aggregate. This aggregate is processed in portable crushing equipment located on-site and shipped out by truck.

Steetley had mined another site, known as the Brow Quarry, which is located south of Highway 5 on the brow of the Escarpment. Then from 1980 to 1989, it commenced the rehabilitation of

that site through landfilling. The company also owns and operates a transfer site for non-hazardous solid industrial waste at its Queenston Quarries located in Niagara-on-the-Lake.

The South Quarry is 167 ha (413 acres) in size, of which approximately 135 ha has been mined within the portion referred to as the main bench (the upper 50 feet). The floor of the main bench has a 6 m downward slope about 6 m from the north end of the quarry to the south end, and is 15-20m below the surrounding ground surface. Cast overburden strippings have been backfilled into 55 ha of the main bench.

Steetley intends to continue its quarry operations at the site for another 13 years by mining the lower bench of the quarry floor. The mining of this area will involve blasting operations. Concurrently, the company proposes to construct an engineered landfill, with a fill area of 78 ha (193 acres), within the quarry. The lower bench will increase from 20 ha to 80 ha (growth will be in a north-south direction), with a 100 m separation zone from the landfill area. The remainder of the site will become a buffer zone.

Technical aspects of the proposed landfill include a low permeability double liner consisting of crushed and compacted clay-shale, an underdrain leachate collection system serviced through maintenance galleries, on-site pre-treatment of leachate, discharge of pre-treated leachate to an in-ground pipe to the Town of Dundas sewage system, and a combined ground water management system and stress relief system (to prevent buckling of the quarry floor) with gallery access for maintenance. This system will employ sub-floor collector slots, which are expected to relieve horizontal stress in the quarry floor and thereby prevent bedrock heave. If the quarry floor were to buckle, the landfill's liner could be ruptured.

The proponent has applied for approval of a site capacity of 26 million tonnes (to be deposited at a maximum rate of two million tonnes/year) of non-hazardous, solid industrial, commercial and municipal waste. Industrial waste is expected to constitute about 80% of the waste stream. The minimum life span of the landfill would be 13 years.

The potential volume of waste and cover material at the proposed landfill is 22,391,000 m³, assuming a refuse density of 1,260 kg/m³. The proposed service area is the entire Province of Ontario. After the closure of the site, the proponent proposes to landscape it and construct an 18-hole golf course. The proponent seeks approvals from the Board for the following:

1. the environmental assessment of the undertaking;
2. an application under the *Environmental Protection Act* for a Provisional Certificate of Approval for a Waste Disposal Site;
3. an application under the *Ontario Water Resources Act* ("OWRA") for approval of a storm water drainage system;
4. an amendment to the official plans of the Region and the Town, and to the zoning by-law of the Town, pursuant to the *Planning Act*, and
5. a development permit, pursuant to the *Niagara Escarpment Planning and Development Act*, for a sewer pipe to carry leachate destined for treatment at the Regional Sewage Treatment Plant serving the Town of Dundas.

Notice of Hearing was issued on August 13, 1992, and the Board conducted a preliminary hearing on December 7. In its procedural directions, dated January 15, 1993, the Board, among other things:

- identified in par.10(a) a list of preliminary issues for consideration at the hearing,
- scheduled a funding hearing (par.3), if required, for February 16,
- scheduled the hearing of evidence, par.17(a), to commence on April 26.

3. The Parties

The Region contains six lower-tier municipalities, including the Town, with an overall population of approximately 450,000 people. There are seven operating landfill sites in the Region, including one owned by the Region. The Region is responsible for, among other things, solid waste disposal and sewage treatment, and the area municipalities' responsibilities include solid waste collection. The Authority manages 8,509 acres (3,050 ha) of property, much of it located within the Region.

The Region and the Authority have formed a coalition and have filed a joint application, requesting funding for legal counsel and consultants. They plan to share their technical evidence and consulting witnesses with the Town. They have concerns about several issues including compliance with the EAA, the adequacy of the environmental assessment ("EA") process, the public consultation carried out by the proponent, hydrogeology, design and operations, land use planning, recreational impacts affecting the Authority and impacts on the aquatic and terrestrial environment.

The Town, with a population of 28,281 people, enacted by-law 89-32-G prohibiting the location of any new landfill sites in the Town. The proponent seeks to amend the Town's official plan and this by-law. The Town's concerns included many of the issues which were also raised by the Region/Authority, and in addition, surface water drainage, size of the service area, air quality, traffic, nuisance effects (dust, odour and noise), post-closure maintenance, social and community impacts, and property values.

GASP, an incorporated local citizens' group established in 1985, has 700 members. It has been active in environmental matters of concern to its members for several years. Most of these matters have involved the various local operations of the proponent. With the encouragement of the Board at the preliminary hearing, GASP agreed to represent several other opponents of the undertaking who had been seeking party status:

- Calvin Christian School, located about 500 m east of the site, with 216 students (kindergarten through grade 8) and 13 staff;
- Arnold Hood, a 35-year resident of the sub-community of Taylor Crescent located within 500 m of the site;
- Michael Wheeler, a resident of the Millgrove community, which is located near the site and is susceptible to truck traffic (and other impacts) generated by the operation of a large landfill;
- the Parish of St. Paul's Westdale and Cootes' Paradise, which is concerned about the impacts which the undertaking will have on the downstream community, and particularly Cootes' Paradise (a large bay connected to and west of the harbour of the City of Hamilton, and described as a "major natural habitat for migrating waterfowl, and for many indigenous species" (Transcript of preliminary hearing, p.55).

GASP has identified many concerns similar to those raised by the Region/Authority and the Town, including issues such as alternatives, site selection, absence of natural containment features, long term financial assurances and impacts on the Escarpment.

Party status was granted to the Niagara Escarpment Commission ("the NEC") and Taro Aggregates, a company which owns and operates one of the landfill sites located within the Region. Taro is currently engaged in an EA process involving the continue use of its landfill operation, which receives solid non-hazardous industrial waste from within the Region. Taro intends to oppose the proponent's undertaking on the issue of need, and will be a part-time party at the main hearing.

In its opposition to the undertaking, the NEC intends to raise many of the issues already mentioned such as need, the EA process, ground and surface water concerns, long term technical problems with the integrity of the landfill (e.g., the unproven ability of the proposed clay-shale liner, instability of the quarry floor from regional or local stresses which may cause heaving or pop-up in the floor beneath the landfill, thereby damaging the liner and the leachate collection system), and natural environment impacts, particularly with respect to the Escarpment (including Spencer's Gorge, Cootes' Paradise and Grindstone Creek Valley).

The Panel invited the NEC's counsel to attend the funding hearing to provide more information about the case she intends to present. Ms. Orr advised that she expected to call a planner (to deal with the NEC Plan) and an expert witness to deal with hydrogeology and geology (including leachate collection, ground water impacts, stresses on the quarry floor, and potential pop-ups).

The provincial Ministry of the Environment ("MOE") is also a party to the proceeding, and takes the position that the proponent has complied with the EAA, and the MOE's various EA and landfill policies and regulations. It is therefore not opposing the undertaking at this time, provided appropriate conditions of approval are imposed.

The Panel invited the MOE's counsel to attend the funding hearing to assist the Panel with information about its case, and to make submissions with respect to the funding applications. The MOE is concerned about the lack of natural containment at the site, and the extensive amount of engineering required to avoid leachate migration. Ms. Hall advised that the MOE will therefore be giving close examination to the evidence and conducting its own review of the technical reports.

She will be calling MOE staff as witnesses in the areas of EA process and planning (the staff EA reviewer), landfill design, hydrogeology, leachate collection, site closure (a panel of three engineers will deal with geotechnical, regional biology and the OWRA application), noise (an acoustical engineer), dust, traffic, gas emissions, social impact, economic impact and financial assurances (two witnesses from the fiscal planning branch of the MOE).

4. The Funding Proponent

Mr. Martin, counsel for the proponent, advised the Panel that the proponent consented to being named as the funding proponent pursuant to s.6 of the IFPA. Accordingly, the Panel made this designation during the funding hearing.

5. Preliminary Matters

Although each of the applicants included a claim for the estimated cost of transcripts, Mr. Martin announced at the funding hearing that an agreement had been reached between the applicants and the proponent whereby the proponent would provide at its own expense one copy of the hearing transcript to each of the Region/Authority, Town and GASP. For this reason, it is unnecessary to deal with the issue of the cost of transcripts in this decision.

During his presentation of the case for the Region/Authority, Mr. Lederer advised that he had written to counsel for the proponent (Exhibit 10, tab 2) asking for financial statements, details of anticipated tipping fees and operational expenses, and other information that would disclose the proponent's expectations of costs and revenues should the undertaking proceed. He wanted this information for the funding hearing.

The proponent objected to providing this information, claiming that it was confidential and unnecessary. Its position was that since it had consented to being named funding proponent, and was not asking for relief due to financial hardship under s.8(3) of the IFPA, the question as to the potential profitability of the undertaking was not relevant to the determination of funding.

Having failed to obtain this information, Mr. Lederer then had his clients' economic consultants prepare a written opinion ("the Peat Marwick report") with respect to the potential profitability of the undertaking, and he sought leave to file this document during the funding hearing. Counsel for GASP supported this request.

The proponent objected to this material for the same reasons. Mr. Martin submitted that if the proponent's information on this subject is not relevant, then neither is the Peat Marwick report.

The Panel ruled against the admission of this material into evidence, and indicated that reasons for this ruling would be included with the funding decision. In our view, the issue of the

potential profitability (or lack thereof) of an undertaking, whether the proponent be a public agency or private enterprise, is not a relevant consideration for a funding panel.

In his letter, Mr. Lederer indicated that the April 2, 1990 decision of the funding panel in *Steetley Brow Quarry Funding*, EP-89-04(F), which awarded separate funding for legal representation and consultants to two municipalities, may have concluded that potential profitability was a relevant consideration. The decision is silent on this question, and contains no indication that evidence was admitted with respect to profitability. Counsel did not direct us to any other decisions in which this issue has been considered before, nor are we aware of any.

In coming to our decision we relied upon, among other things, the following factors:

- (a) The level of profitability of an undertaking may bear no relationship to the environmental impacts and risks associated with it.
- (b) The level of funding awarded should be determined, not by the amount of money which happens to be available in a proponent's present or future budget, but rather the need to provide the hearing panel with helpful evidence on and debate about the important issues which it must consider in coming to a decision. The IFPA directs the funding panel, in s.7(2)(b), to consider whether the representation to be funded will "assist the board and contribute substantially to the hearing". An undertaking should be properly scrutinized, whether or not it may be profitable for a proponent. The issue of the appropriate level of funding is discussed further in sections 6(a) and 6(g) below.
- (c) The profitability of a proposed undertaking is not identified as a relevant consideration, or indeed mentioned anywhere, in the IFPA.

It is, of course, within the Board's mandate to determine whether or not it considers the profitability of an undertaking to be a relevant issue at the main hearing.

6. General Issues

A number of general issues which arose during the funding hearing have a bearing on our approach to the determination of which applicants ought to receive funding and the amount to be awarded. Although many of these issues have arisen in other cases, the submissions of the parties, and the variety of decisions to which they referred, indicated to us that some guidance from the Panel, with respect to the appropriate principles to be followed, would be of assistance

to the parties here, and to parties in other proceedings in the future. Some of these issues, and the submissions made with respect to them, are closely inter-related.

(a) The Purpose and Level of Funding

The parties' submissions raised fundamental questions about the objective of funding and the appropriate amount or level of funding to be awarded. Mr. Lederer stressed (and the other applicants agreed) that the purpose of funding is to create a level playing field, and enable an intervenor to provide an effective intervention. Accordingly, the driving force in assessing an application should not be a party's access to funds.

The proponent's position is that funding should only be provided when necessary (and to the extent required) to get the players into the game adequately equipped. Ms. Spoel submitted that the purpose of funding is to enable intervenors to bring useful evidence before the board to help it make its decision. These two propositions are not necessarily consistent.

Ms. Hall did not accept the level-playing-field argument. She submitted that the purpose of the Act is to provide start-up money to allow people to participate in the process. Costs are available at the end of the hearing to deal with actual expenses.

Several sections of the IFPA help to define the purpose(s) of funding:

- s.4(2): the funding panel shall decide which intervenors should receive funding, and the amount to be awarded;
- s.7(1): intervenor funding may be awarded only with respect to issues of public concern;
- s.7(2): includes eight factors which must be considered, including the direction in s.7(2)(b) to examine whether the board will be assisted by the proposed funding;
- s.7(3): in determining the amount of funding to award, the funding panel must apply legal aid rates to lawyers, impose a ceiling with respect to disbursements, award only eligible disbursements, and deduct funds reasonably available from other sources;
- s.7(3)(a): the compensation for legal representation must be at the legal aid rate (the purpose of funding under the Ontario Legal Aid Plan is to provide legal services only to clients of modest means), even though, in our view, this level of funding in no way equalizes the positions of the parties;

- s.12(1): the board may award supplementary funding if it is of the opinion that the original award was inadequate.

Mr. Lederer submitted that we ought to consider statements made in the legislature to glean the intentions of the politicians. He filed an excerpt from the proceedings of the Legislative Assembly of Ontario, dated December 14, 1988, which contains discussion of the IFPA when it came up for second reading. With respect, we do not believe that it is necessary to resort to this source in order to determine the purpose of intervenor funding.

We have been assisted in our examination of the IFPA by previous board decisions. The 1989 decision in *Maidstone Funding*, EP-89-02 (F) included the following observations:

These and other statements in the compendium and a consideration of the provisions of the Act lead me to the conclusion that a liberal interpretation should be given to its provisions in order that the intervenor be able to develop an independent and effective role at the hearing. I take the intent of the Act as being an attempt to redress, at least in part, the economic imbalance obtaining between the parties. To the best of my ability, I am to determine the amounts that I consider reasonably necessary for the intervenor to make its case before the hearing panel. (p.3)

In *Hydro DSP Funding*, EA-90-01 (F), the Stage I decision of June, 1990, stated:

The Act does not define the purpose of the intervenor funding. However, it is generally accepted that the purpose of the intervenor funding program established by the Act is to assist groups or individuals to bring matters of public concern before certain regulatory and administrative tribunals. The provision of intervenor funding for this purpose seems to recognize implicitly that the decision-making processes undertaken by these tribunals are enhanced by the contribution of public interest intervenors. (p.6) ...

Subsection 7(2)(b) is designed primarily to ensure that a funded intervention is one that will benefit the Board in considering and deciding the issues raised in the hearing. This provision figures prominently in the panel's decision to fund certain applicants whose interventions, it is anticipated, will prove valuable to the Board and to the hearing process. (p.15)

In *Timber Management Funding*, EA-87-02(F), a 1991 decision included the following observation:

However, the overriding consideration in coming to a decision on the allocation of the funds was to try to ensure that the funds will be used to enable the participants to assist the Board *in its examination* of the environmental assessment. (p.13, emphasis added)

In *Essex-Windsor Participant Funding*, OC-91-01(F), a 1992 decision states:

There is an additional and fundamental purpose behind all funding, including participant funding, intervenor funding under the IFPA and awards of costs. ... In my view, the Board must consider whether funding of an applicant is likely to benefit the pre-hearing and hearing stages and assist the Board. (p.7)

We do not agree with the suggestion that the IFPA establishes a standard for funding which necessarily permits a level playing field, funding for all issues and special interests, or an exhaustive examination of the undertaking which leaves no stone unturned. In our view, the purpose of funding is to ensure the adequate representation of those interests which are reasonably necessary for a proper inquiry into the issues which must be examined by the board. The answer to the twin questions of whom to fund, and how much funding to award, should be based upon the funding panel's assessment as to what assistance the hearing board requires to do its job, and whether an intervenor, if funded, will make a substantial contribution to the hearing.

If the hearing board concludes that it requires more assistance at a hearing, it can award supplementary funding or appoint its own experts pursuant to s.10 of the CHA. It can also award costs. If funding was intended to provide full up-front financing of all eligible intervenors, there would be little need for costs awards at the end of a hearing.

(b) The Length of the Hearing

This subject was canvassed at the preliminary hearing. The Board indicated that it wished to set an objective of 80 days for the duration of the main hearing (including final argument and site visits), even though the parties estimated that approximately 100 days would be required. This was confirmed in par.16 of the procedural directions.

At the funding hearing, the applicants submitted that since all of the parties had agreed to an estimate of 100 days, we should base our award on that estimate. To do otherwise, they said,

could lead to unnecessary and time-consuming supplementary funding applications and hearings and delay the completion of the main hearing.

In its volume of Supplementary Material (Exhibit 10), the Region/Authority included the December 1992 decision in *Niagara Falls Funding*, CH-91-09 (F), in which a funding panel awarded funding for an additional period of time, but ordered a hold-back for that amount, which could be released by the hearing panel if the hearing extended into the additional time period. The hold-back was based on an agreement between the proponent and the funded parties in that case.

The hearing panel is responsible for the conduct of the main hearing, and is also responsible for ensuring that the assessment process is conducted efficiently. There was no agreement for the additional period, even with a hold-back. Even if such a joint recommendation had been made, we would be reluctant to reconsider the potential length of the hearing in light of the objective set by the hearing panel. Accordingly, we have awarded funding for 80 days.

(c) The Funding of More than One Party

The parties made submissions with respect to the issue of the funding of more than one intervenor on the same issue. The IFPA deals with this question, albeit briefly, in s.7(2)(b). It requires a panel to consider whether a separate representation of an eligible interest, as defined in s.7(2)(a), is necessary.

The proponent's position is that funding should not be granted to two intervenors if they have the same position on the same issue. They should be under one umbrella. The onus is on an applicant to establish the need for separate funding in addition to that of another intervenor. Unless it can demonstrate that the proposed work of its consultants and lawyers is substantially different from that of other applicants, it should not be separately funded. The three intervenors are completely opposed to the undertaking, and their issues of concern are identical.

GASP's position is that there must be a balance between the need for an efficient hearing process and the need to give each applicant the minimum tools it requires to participate effectively in the process. It is awkward to remedy a lack of funding by a subsequent supplementary funding award, as this can lead to delay at the hearing stage. One of the legitimate purposes of the funding of consultants (even if this involves some duplication) is the education of an intervenor, to enable it to acquire more knowledge about relevant issues. Although duplication and

repetition of evidence at the hearing must be avoided, GASP should not have to share consultants at the pre-hearing stage.

The Town's position is that the Panel should attempt to avoid duplication, but should nevertheless fund applicants so that their position can be advanced effectively. The Panel should take a broad and liberal approach to funding. Separate funding should be provided where potential or inherent conflicts exist between intervenors. Intervenors will not spend allocated funding if it becomes unnecessary to do so (Mr. Lederer also advanced this argument). This is related to GASP's argument that it is better to err on the side of providing funding now, rather than leave something for supplementary funding later in the process.

The position of the Region/Authority is that where there might be a conflict between applicants, funding for separate experts is required. Mr. Lederer submitted that board decisions have established that the test to be applied is the potential for (rather than actual) conflict. If parties voluntarily work at forming coalitions, but the Panel pushes them to collaborate even further, they will have no incentive in the future to make the compromises necessary to form coalitions. Different interests should be fully canvassed in the adversary process, which is intended to produce thorough debate through cross-examination from different perspectives. Although this process may have inherent inefficiencies, it produces more and better information to assist the board.

The MOE's position is that the appropriate question is whether the evidence, for which funding is requested, is necessary. Funding is not a matter of right, but rather it is within the discretion of the funding panel, according to s.7(2) of the IFPA. The IFPA is intended to promote an efficient hearing without fostering duplication. Identical interests should not be funded. Separate funding might be appropriate where intervenors have distinctly different perspectives on the same issue. Although it might be convenient for an intervenor to be funded to retain its own consultants, rather than having to share with other parties, this is not an adequate reason to provide separate funding.

In *OWMC Funding*, CH-87-02 (FA), a January 1990 funding decision commented on the issue of duplication as follows:

The Panel was concerned that some of the issues raised would be canvassed by the first three applicants whose cases have already been funded. However, after seeking comment from those parties the Panel was convinced that there would not

be duplication given the lack of focus on the transfer station issue, at least to this date, by the other parties. (p.2)

In the *Hydro DSP Funding* Stage I decision, the panel made the following comment with respect to s.7(2)(b):

While the panel agrees with counsel for Hydro that this provision is designed in part to avoid duplication of issues, the phrase "separate and adequate representation" also speaks to the adequacy of representations on behalf of deserving interests that might not be advanced effectively without a separate representation. (p.15)

In the 1990 Stage II decision in *Hydro DSP Funding*, the panel made the following comments with respect to s.7(2)(a) of the IFPA:

One group of people in one area may form different constituencies in relation to different issues. Conversely, the same issue may attract activity by a range of intervenors who function from differing perspectives. (p.13)

In the 1991 decision in *OWMC Supplementary Funding 1*, CH-87-02 (FAS), the board made the following comments with respect to duplication:

Section 7(2)(a) looks at whether an interest should be represented. Section 7(2)(b) looks at whether an interest should be separately represented. This criterion is related to the 7(2)(f) criterion, whether the intervenor has attempted to bring related interests of which it was aware into an umbrella group to represent the related interests at the hearing.

The intention of the Act is clear: duplicative efforts ought not to be funded. (p.22)

We agree with this analysis, and believe that we are constrained by the provisions of the statute. Funding should not be granted to two intervenors if they have a similar position on the same issue. We accept the submissions of Ms. Hall which are summarized above, except that we do not accept that possessing different perspectives should necessarily lead to separate funding. Duplication during both the pre-hearing and hearing stages must be avoided, not only because the IFPA requires it, but because the amount of funding awards must be balanced with the need to keep the length and cost of hearings within reason. Otherwise, we apprehend that respect and support for the funding and hearing process will be seriously undermined. In that regard, we

note that Mr. Lederer's reference to "the fact that this process is in some degree in disrepute" (Transcript, vol.1, p.272), supports our concern.

We do not think that it is realistic to award potentially duplicative funding at the funding stage with the expectation that intervenors will choose, during the balance of the process, not to use it.

Generally, potential conflict should not, in itself, constitute a sufficient basis for funding more than one party. There is always a possibility, no matter how remote, that potential conflicts may develop between intervenors. Perhaps that is why this argument is advanced so often in funding hearings. If it is accepted as an appropriate test, then most intervenors would automatically qualify for separate funding. The potential conflict should be identifiable, substantial, probable and result in the likelihood that unless separate funding is granted, the board would be left without the evidence and assistance it will require during the hearing.

Even where intervenors have different perspectives or conflicting points of view on an issue, it does not necessarily follow that there a separate representation with respect to that issue is required. The onus is on the intervenor to satisfy the funding panel, on a balance of probabilities, that the board will be assisted by this additional representation and that it will contribute substantially to the hearing.

We do not accept GASP's submission that funding, duplicative or otherwise, should be awarded to help educate an intervenor about the relevant issues. There is simply no authority in the IFPA for funding on this basis. If it is the wish of the legislature that the scope of funding include this ground, then s.7(2) ought to be amended accordingly.

We acknowledge that the Region argued that funding fewer intervenors may diminish the effect of the adversarial process, in that there may not be as many lawyers and consultants involved in the pre-hearing and hearing process. However, the IFPA does not lend support for the proposition that quantity will lead to quality. With respect to Mr. Lederer's concern that coalition-building will be frustrated if boards or panels push intervenors even further in that direction than they are prepared to go, we note that the avoidance of duplication and compliance with s.7(2)(f) is not optional.

(d) The Impact on Funding of Non-funded Parties

To what extent should a funding panel take into account the case to be presented by non-funded parties such as the MOE, the NEC and Taro Aggregates, if these parties are calling expert evidence on some or all of the issues which the intervenors wish to address?

In the *Niagara Falls Funding* decision, the panel directed the intervenor to ask the MOE what evidence it would be presenting with respect to issues with which it was concerned, and "to determine whether their interests coincide in some respects so that each party can allocate its resources accordingly" and "some appropriate division of evidence can be arranged" (p.4).

We agree with this approach. Although we realize that it cannot be assumed that intervenors will necessarily receive the full cooperation of non-funded parties, before there has been a determination under s.7(2)(b) as to whether a separate representation by intervenors is necessary, an examination of the nature of the case to be called by non-funded parties is required.

(e) The Funding of Public Bodies

The submissions of the parties raised two questions which will be addressed in this section. Firstly, what principles are applicable to the funding of public bodies such as municipalities and conservation authorities? Secondly, how does their entitlement rank in comparison with that of residents' groups?

GASP's position is that IFPA funding was primarily intended for citizens' groups. The purpose of funding (and the IFPA) is to promote accessibility to the process. The members of GASP are the ones most affected, and with the greatest financial need. They have a unique interest which cannot be addressed by the Region or the Town. In the event that there is a competition for funding between GASP and the other applicants (whose applications GASP does not oppose), GASP should get preference.

The Town's position is that even though the Region, the Town, the Authority, GASP and the NEC are all opposed to the undertaking, their interests are not identical. There is a possibility that conflicts may develop in the future between the Town and the approach of the other intervenors. The budget of the Town, with its relatively small population and tax base, is fully

allocated. In general, and in the case of the Town as well, the revenues of municipalities are down and their expenses are up.

The Town has no available funds to devote to the cost of this hearing. In order to finance its intervention the Town would be forced to either raise taxes by an additional 8%, or borrow. It does not wish to do either. It is part of the Town's mandate to participate in a process where its zoning by-laws and official plan are involved. In addition, Mr. Pinelli submitted that there will be some new and important issues decided in this case (a private proponent promoting a province-wide facility, the first private sector EA hearing for a new landfill, and an engineered facility with no natural containment which uses a new combination of engineering technologies), and it is important for the Board to have the benefit of the municipalities' contribution on these matters. Mr. Lederer echoed this point on behalf of the Region/Authority.

Mr. Lederer submitted that it was never intended that municipalities (or the Authority) should have to spend money from their own budgets on a case such as this. In light of the very large capacity of the undertaking, the province-wide service area, and the profit motive of the proponent, the Region should not be required to pay the entire cost of its intervention. The Region would have to divert funds from other necessary activities and responsibilities in order to finance all of the costs of its intervention. The Authority cannot afford to participate in the hearing on its own. If funding is denied his clients, Mr. Lederer indicated that it will be necessary for them to restrict their involvement in the hearing.

It is the Region's position that it has a statutory responsibility to provide for solid waste disposal within its territory, and is therefore under a duty to conduct a comprehensive review of the proponent's undertaking. The Region must know where the potential risks are. In the case of a private-sector undertaking, the Region acts as agent on behalf of all of the communities within its boundaries, and should therefore be funded to take the lead role in its intervention.

Mr. Lederer also submitted that a municipality (especially an upper-tier municipality) generally has a wider perspective than that of a local group. The near-by residents are unconditionally opposed to the undertaking, whereas the Region wishes to study and evaluate the proposal in a comprehensive fashion, determine its flaws and shortcomings, and consider whether they can be satisfactorily remedied. He stated that this balanced and more thorough approach will contribute substantially to the hearing and provide the greatest benefit to the Board.

The MOE's position is that funding should not be granted to the Region, Authority or Town. Ms. Hall submitted that if funding is granted to these intervenors in this case, given their financial capacity, the doors will be flung wide open for such applications in the future. She predicted that these applicants would be mounting their cases whether or not funding is granted, and argued that a costs award at the end of the hearing is the appropriate mechanism for compensating these public bodies. The Town and the Region/Authority appeared to be unenthusiastic about their prospects of receiving a costs award at the end of the hearing.

Ms. Hall submitted that the Region, Authority and Town have ignored the importance of the active role taken in this case by the MOE, which also has a public interest mandate: the protection of the environment of the entire Province. Mr. Lederer responded that, in reality, the MOE represents only an aspect of the public, namely, the provincial government and Ministry staff.

The position of the NEC is that municipalities, both regional and local, sometimes approach issues from a different angle than each other, and therefore can bring forward evidence that is very important for the board.

The proponent is opposed to funding these public bodies. Mr. Martin stated that this would increase the already excessive cost and length of EAA hearings. This echoes Mr. Lederer's observation that the process is in disrepute. With respect to the issue of the novelty of this application, he indicated that this will not be the first private-sector undertaking under the EAA to come before the board. He also submitted that if a municipality considers an upcoming application important, it can establish a budgetary reserve to provide the necessary financing. This undertaking has been in the process for several years, with the full knowledge of the Region and the Town.

The issue of the funding of public bodies has arisen before. Funding was awarded to municipalities in cases such as *Steetley Brow Quarry Funding*, *Innisfil Funding* CH-91-01(F) and *Storrington Funding* EA-91-01(F). In *Storrington Funding*, the panel was dealing with a small municipality with an annual budget of \$1.5 million. Financing its intervention would have required it to raise taxes by 60% since only half of its revenue was derived from taxes. In the decision, the panel:

- indicated that costs could be claimed by the township,
- concluded that the township could borrow money if there were no funds in its current budget,
- considered the anticipated length of the hearing (10 weeks),
- took into account the fact that the township was the host municipality for a site used by other, larger municipalities,
- recognized that the township may derive benefits from the approval of the undertaking (free disposal of municipal waste, and maintenance of access roads),
- found that the township had not satisfied s.7(2)(d), the requirement to use reasonable efforts to raise funds from other sources, and required a contribution of 50% of the award,
- acknowledged the proponent's position that "funding of public bodies such as municipalities should be reserved for exceptional cases" (p.10), but made no comment on this proposition, other than to observe that municipalities can raise funds by way of taxes.

In the 1990 decision in *OWMC Funding*, two municipalities were denied funding:

The central issue with respect to the City of Toronto's application, in the Panel's view, was whether it has sufficient resources to enable it to adequately represent its interest. Based on the financial information submitted, the Panel believes that the City has sufficient financial resources and that the question is simply one of allocation of funds. The City, as well as any other party, is free to apply to the Joint Board for costs at the end of the hearing on the basis of its contribution to the Board's deliberations. ...

Neither the City of Toronto nor the Town of Milton attempted to develop a broad-based intervenor group to deal with the transfer station issue at the hearing. The Panel believes that these two parties did not therefore make reasonable efforts to raise funding from other sources, nor have they attempted to bring related interests into an umbrella group. These two applicants have not even defined their relationship to each other. (pp.2-3)

With respect to the application of a conservation authority, the board found:

These issues are of public interest and affect a significant segment of the public, but it appears that many of them will be addressed by other parties which have already been funded. The balance of the issues relate essentially to the Authority's normal regulatory function. ...

As a matter of principle, however, the Panel believes that the Conservation Authority's normal budgetary sources for its regulatory activity must provide funding for it to carry out its duties, even in their extended form. The Panel

notes that the Authority has made no formal attempts to obtain funding from the Ministry of Natural Resources, from which it may receive grants for special purposes. (pp.3-4)

In *KAM Power Funding*, EA-89-01(F), municipalities were denied funding because they had sufficient financial resources and they would be major beneficiaries of the undertaking if approved.

In *Innisfil Funding*, the panel concluded that since the municipality's interests encompassed the interests of the other two intervenors (a citizen's group and conservation authority) and there was no conflict of interest among the intervenors, funding (for lawyers) for the balance of the process should be awarded to the municipality alone.

It is also instructive, in our view, to consider how this issue has been approached by joint boards from the perspective of costs. In *Enterac v. Niagara Escarpment Commission*, CH-90-03, reported at 25 OMBR 154, a joint board refused to award costs to a regional municipality, local town and conservation authority (see p.184 of reported decision), and stated:

Agencies and Municipalities, being publicly funded, are not for that reason ineligible for a cost award. However, here the Board finds that they should not receive any award for costs as they were merely performing the normal duties placed upon them of defending their planning and environmental policies in the public interest. Their attendance, however, was both necessary, expected, and appreciated by the Board. (p.39)

The Board found (at p.40) that the ratepayers' association deserved costs because, among other things they were reacting to a developer's proposal over which they had no control. They had depended upon the municipality, region and other agencies to consider their interest, but found the town advocating far greater densities. Finally, the Board found that there was an economic imbalance among the parties.

In *Re Durham*, CH-90-09, reported at (1991) 25 OMBR 385, a joint board dealing with a costs application made the following comments:

It appears to us that previous Joint Board decisions have tended to deal with the claims for costs by municipalities on a case-to-case basis. We are of the view that this approach makes good sense, as it leaves to the board the flexibility to assist municipalities in appropriate cases. For example, the size of the

municipality and its tax base will significantly affect its ability to finance its intervention without assistance. Further, the need for a municipality to intervene in a matter will vary from case to case. Costs should not be awarded where the intervention was not necessary. On the other hand, if a municipality is representing its ratepayers' interests, it is not totally unlike the position of a municipal-wide residents' association. Needless to say, it has not ever been suggested to us that such associations should generally be ineligible for costs.

In our view the question as to whether costs should be awarded to a municipality depends upon the twin factors of need and contribution to the hearing process. We do not agree with Mr. Lederer's suggestion that need is unrelated to the availability of money. However, we do agree that to some extent need is a relative term. For example, we would not expect a small municipality to exhaust its education or welfare budget in order to finance its intervention before a Joint Board. (pp.421-2)

While the decision as to whether to fund a public body must be made within the context of the facts and circumstances of each case, we endorse the following general principles which emerge from the above-noted decisions:

- 1) A large public body ought to be able to finance its intervention without intervenor funding.
- 2) If intervention in hearings is part of the normal regulatory activity of a public body, it should look to its own budgetary sources to finance its case, rather than intervenor funding.
- 3) In the case of a small public body which is less able to absorb the cost of intervening, the presence of any of the following factors may tend to reduce the prospects of receiving a funding award:
 - a) it failed to explore other sources of funding, including borrowing;
 - b) it may derive benefits from the undertaking;
 - c) the hearing process is not anticipated to be unduly lengthy;
 - d) it failed to establish a broadly-based coalition with other parties;
 - e) its interests will be addressed by non-funded parties;
 - f) its intervention is unnecessary;
 - g) it failed to allocate its resources properly.

We accept GASP's submission that IFPA was primarily intended to benefit residents groups, as they generally have small budgets and little or no access to public funds. In addition, the financial contributions of their members are generally not tax deductible. Where a choice is to be made as between funding a public body or an established and responsible residents' group,

all other factors being equal, it is our view that the residents' group ought to be given priority. Costs awards are available at the end of the process to those public bodies whom the board considers deserving.

(f) The Funding of Original or Field Work

Some of the funding in the application of the Region and GASP is for original or field work by consultants, in addition to a review of the proponent's work. The MOE's position is that generally, review is all that is required. This is not an absolute position, but a compelling case should be made out before such funding would be allowed. Ministry staff are generally satisfied by reviewing the proponents reports. Ms. Hall submitted that if the proponent's work is inadequate, then its case will fail. It should be sufficient for intervenors to critique the proponent's case and expose the flaws.

GASP's position is that some data collection is necessary (on the issues of social impacts and impacts on the natural environment), in order to fill in gaps and test the proponent's work. The proponent is opposed to both the scope and methodology of GASP's proposed study. It says that GASP wants to explore a larger area than the proponent with respect to social impact and biology.

The Region's position is that an intervenor should not be content to merely poke holes in the weaknesses of the proponent's material. A more constructive approach is desirable, in which the holes are explored (independently) with a view to determining whether they can be repaired.

Ms. Spoel submitted that if any parties feel that there are holes in the research or studies of the proponent, requiring more field-work, they should attempt to address this through interrogatories. In the event that the proponent cannot provide satisfactory answers, they can bring the problem to the attention of the Board at that time.

In *Storrington Funding*, a request for \$14,000 for a real estate appraiser to report on 19 properties was rejected, apparently because it dealt with private interests. In a subsequent decision, the panel awarded funding for a more generalized appraisal. A request for \$40,000 for contaminant modelling was rejected, without prejudice to the applicant's right to make a supplementary funding application when and if an evidentiary basis could be established:

I am not in a position to determine whether funding for contaminant modelling is appropriate or necessary. It seems to me that the answer to that question may depend on the extent to which the hydrogeologic environment underlying the expansion area is similar to that underlying the existing site, and whether the proponent's ground water monitoring program is comprehensive. In any event the determination requires an evidentiary foundation beyond the scope of a funding hearing. It is an issue for the main hearing and the IFPA expressly prohibits a Funding Panel from determining main hearing issues [s.4(3)].

In an April 1991 supplementary funding decision in *Hydro DSP*, the hearing panel dismissed a request for \$1.8 million to conduct seismotectonic and earthquake engineering research:

The Panel has determined that it is not appropriate to grant this funding request. The scale and scope of the proposed research suggests that this Panel should take on the role of a major research granting agency. The Panel does not interpret the legislation to give it that mandate. There may be dozens of issues that will come before us in which our understanding might be illuminated by more research. It is not reasonable, however, that we should require the proponent to fund them, nor that we should require the proponent to do in-depth studies which the intervenors suggest. Hydro must establish that its plan is reasonable and should be given approval. If Hydro has not done sufficient research to support its plan, the plan may not be approved. At this point, however, Energy Probe has not convinced the Panel that the proponent and AECL are not responsibly carrying out their mandates, nor that further or more expeditious research is required. (p.2)

In a May 1991 decision in the same hearing, involving a supplementary funding request by another intervenor, the Board stated:

- (b) In keeping with an earlier decision the Panel will not allocate intervenor funding to finance original research or primary data collection.
- (c) The mapping of roadless areas and sites of rare or endangered species may well be worthy undertakings, but financing such activities on a broad scale through this Hearing cannot be justified. (p.2)

The debate over this issue involves a balancing of competing priorities. On the one hand, original work by intervenors' consultants might assist them (and the Board) in determining whether the proponent's work is accurate and complete. Also, it would permit the intervenors to study those areas which have not been examined by the proponent.

On the other hand, the cost of this extensive original work could dwarf the amount of funding which would otherwise be granted. Once embarked upon this path, it is difficult to imagine how the amount of funding and the cost and length of hearings will ever be brought under control. This trend would run contrary to the siren call from all quarters for more efficiency in the hearing process.

We agree with the above observation that it is difficult to assess such requests without an evidentiary base. However, it is possible that an examination of that evidence could lead a funding panel to make findings of fact related to the undertaking, and this is the exclusive domain of the Board. We adopt the MOE's position that in general, review is all that should be funded. If in the conduct of the hearing, the review exposes significant "holes" which concern the Board, funding of original work can then be considered. A compelling case would have to be made before funding of field work will be awarded. We believe this approach strikes the most satisfactory balance.

(g) The Level of Funding by Private-Sector Proponents

Mr. Lederer submitted that the Region should not have to divert funds or raise taxes in order to intervene in a case involving a large, potentially profitable, private-sector undertaking. As we understand the argument, the role of the Region, in reviewing the proponent's material and participating in the hearing, may ultimately contribute to the approval of the undertaking. In that event, the money spent by the Region is not unlike an investment in the project. Since the proponent will profit greatly from the operation of the landfill, it should be expected to repay the Region for its helpful contribution.

Mr. Martin replied that approval applications for large profitable private-sector projects, such as shopping plazas and residential subdivisions, routinely proceed to hearing without municipalities claiming indemnity from developers for their hearing costs. He questioned why the situation is any different in the case of this undertaking.

Mr. Lederer's argument would appear to us to be more relevant in a motion for costs than in a funding hearing. Only after the conclusion of the hearing, when the Board's decision has been released, could it be determined that the Region's participation has made a positive contribution to the approval of the undertaking. Also, we have some concern with Mr. Lederer's argument about the parties contributing to an approval of the undertaking. Although this may be the

indirect result, the hearing process is not meant to design the undertaking. This should be done before the hearing. It seems inconsistent to argue that the full adversarial process, with its attendant costs, should be employed for the hearing, while at the same time suggesting that the intervenor is contributing to an approval.

Ms. Hall argued that IFPA does not distinguish between public and private proponents, and neither should the Panel. In *Storrington Funding*, the panel dealt with the issue of the level of funding to be imposed upon a private-sector proponent, and concluded:

In my opinion, the fact that the funding proponent is a private and not a public body should not *per se* affect its obligations under the IFPA. ...

I do not accept the Township's argument that the proponent's private sector status ought to weigh in favour of granting the intervenor's requests. I see no reason why, aside from s.8(3) situations, intervenors' entitlement to funding should depend on the nature of the proponent. (p.14)

We agree with this approach.

(h) Commencement Date of Fundable Services

Mr. Lederer submitted that the relevant date for the commencement of work which would be covered by a funding award, is the date of issue of the notice of hearing. All of the intervenors included in their applications time spent for preparation and attendances at the preliminary hearing and funding hearing. The proponent took no objection to this approach, and we have accepted it.

(i) Consent to Funding by the Proponent

In general, the principles enunciated above will be considered differently where a proponent supports a funding request which might otherwise be disallowed. In such a case, it is reasonable, in our view, to expect that a panel will be more sympathetic to the request.

(j) The Funding Hearing Process

Each applicant filed in advance of the hearing a comprehensive tabbed and indexed brief including most, if not all, of the material upon which it intended to rely. Each brief contained the funding application, information about the intervenor, financial statements, the statement of issues which it filed at the preliminary hearing, relevant correspondence, further details about the proposed legal representation, individual work plans and budgets for each consultant, as well as resumes. This format was most helpful to the Panel.

Prior to the hearing, the parties made inquiries of each other with respect to their applications and supporting material in order to seek clarification and further information. This enabled the hearing to proceed quite efficiently, without the need for adjournments or undertakings to supply further information or documentation. In addition, the applicants had explored the extent to which they could agree to work together and share resources. They had also engaged in some dialogue with the proponent in order to explore the possibility of resolving issues. This led to agreement about several matters, such as the supply of hearing transcripts to the applicants.

About one week before the hearing, counsel for the proponent sent to the applicants and the Panel an analysis of the applications, raising general and specific issues, and identifying the areas where the proponent supported and opposed the claims. This commentary (Exhibit 3) was a helpful tool both during and after the hearing.

As a result of the parties' attempts to identify, discuss and resolve issues prior to the hearing, they arrived at the hearing well informed and prepared to focus on the important areas. The Panel recognizes and appreciates the approach taken and the efforts made by the parties.

The Panel wanted to hear about the issues and type of evidence which parties, other than the applicants and the proponent, were intending to pursue. The hearings registrar requested counsel for the MOE and NEC to attend the funding hearing to discuss their cases, and comment upon the applications and issues requiring determination. We found the submissions of Ms. Hall and Ms. Orr to be quite helpful. In order for a funding panel to properly examine areas such as duplication, and gain a better overall perspective about the issues and the parties, it is useful that this type of information be made available at the funding hearing.

The procedure for conducting a funding hearing, outlined in a ruling, dated July 19, 1991, made in *Timber Management Funding*, with slight modifications, was followed during the hearing, and is described as follows:

1. submissions on behalf of the proponent, MOE and NEC;
2. presentation of submissions, with respect to all matters requiring determination, by each applicant;
3. reply from counsel for the MOE and the proponent;
4. reply from each of the applicants.

The parties were not permitted to call witnesses during the hearing. Some of the argument about the claims for consulting fees raised questions about the need for the proposed consulting work, the hourly rates proposed, and the need for the number of people and hours included in the work plans. Counsel for the two applicants seeking funding for consultants complained that they were handicapped without their consultants being able to attend and give evidence at the funding hearing, so that their proposals could be adequately explained and defended.

While we appreciated the applicants' difficulty, we indicated that testimony would not be permitted, because of the considerable time that would then be consumed with the examination and cross-examination of a multitude of experts. Undoubtedly, the proponent would then feel bound to call its own consultants to respond to the evidence given by the applicants' witnesses. All of these witnesses would no doubt expect to be paid for their participation. Funding hearings would thus be transformed into long and costly inquiries. Presumably, preliminary funding would be required to finance the applicants to prepare for and participate in the funding hearing. Although such an inquiry would no doubt result in an exhaustive airing of the issues, we apprehend that the resulting drain on resources would undermine the integrity of the funding process. Further, a decision of the Panel, based on substantive issues such as credibility might create concern about the Board's evaluation of the evidence at the hearing.

The IFPA does not specifically require that a funding hearing be held. Representations and argument should be adequate to enable a funding panel to make its decision. In our view, it is important to ensure that the time and resources of the parties be primarily devoted to dealing with the substantive issues which arise in the main hearing.

7. The Joint Application of the Region and the Authority

According to its financial statements for 1991, the Region had assets of \$382 million, and revenue of \$454.5 million. During the calendar year it spent \$94 million for environmental services (\$67.6 million on current operations and \$26.4 million on capital operations). At the end of the year it had on reserve \$149.8 million.

According to its 1991 financial statements, the Authority posted annual revenue of \$6.5 million, with an additional \$2.5 million from its operations at Heritage Village and Confederation Park.

The request of the Region/Authority for \$1,144,719.30 (net of GST rebate) involves legal representation throughout the hearing and an array of consultants. There is no contribution listed in the application, although Mr. Lederer advised that the Region spent \$260,000 in 1991 to commission a consultant's report on the undertaking. In addition, the Region has decided to contribute the sum of \$1.5 million for hearing expenses (beyond the amount received by way of intervenor funding) of the Region/Authority and top-up of legal fees for the Town.

The amount for legal fees, \$371,322.55, includes 1,900 hours for senior counsel, 1,940 for intermediate counsel, 440 hours for a student and 10% for legal disbursements. The claim for consultants, \$807,189.04, is based on the following components:

Area	Hours	Rates	Disb.	Total
EA Process	660	\$90-\$120	28.1%	\$101,944.25
Hydrogeology/Site Design & Operations	3,772	\$40-\$125	10.0%	\$328,689.02
Public Consultation & Social Impact Assessment	481.75	\$50-\$66.67	4.6%	\$ 31,320.91
Environmental Impact	615	\$43.33-\$130	21.7%	\$ 92,964.81
Land Use Planning	337.5	\$45-\$135	20.1%	\$ 41,478.55
Economic Impact	733	\$150-\$350	9.0%	
Recreation	105	\$50	22.9%	\$ 6,901.50
Conservation Authority	520	\$30-65	16.4%	\$ 28,890.00

The proponent opposed the award of any funding to this coalition.

Mr. Lederer submitted that the contribution of a hearing fund of \$1.5 million should be recognized as a significant contribution, and not treated as evidence that the Region/Authority

does not need funding for its intervention. He also urged the Panel to recognize that, even though his two clients have very significant revenue and reserves, all of it has been allocated for specific expenditures.

Mr. Lederer submitted that the nature of this undertaking (a very large landfill servicing the entire Province) is such that public bodies like the Region and the Authority, with local mandates, should not be required to use their own resources to finance their interventions. In other words, these bodies should not be expected to tap their own budgets when the undertaking will benefit needs which extend far beyond their own borders.

A similar argument was accepted in the 1990 *Keele Valley Clay Borrow* joint board decision, CH-89-01, in relation to an award of costs to a host municipality which was opposing a landfill intended to service Metropolitan Toronto, located several miles away. Although the CHA provides great latitude to boards in deciding the issue of costs, no such latitude exists in the IFPA, in our view. There is no basis within the Act for exempting an intervenor from the various eligibility requirements of s.7(2) because of the nature of the undertaking, or the size or location of the communities it will serve.

Mr. Lederer also submitted that very large funding awards have been made in cases involving other province-wide undertakings, such as *Hydro DSP Funding*, where a large number of intervenors were awarded funding. Since the South Quarry landfill will service the entire Province, he argues that large awards to several intervenors are reasonable in this case. Mr. Martin replied that this undertaking cannot be compared to Hydro's Demand-Supply Plan. Based on the submissions which we received, the South Quarry landfill will not be the only one for the Province, nor will it fundamentally affect or alter waste management throughout the Province. As a result, the panel agrees that the scope or length of this hearing will not be comparable to that of major plan hearings such as *Hydro DSP*.

We are mindful of Mr. Lederer's submission that if the funding application is unsuccessful, the Region/Authority will restrict their involvement in these proceedings (Transcript vol.1, p.181). He submitted that the Region should not be required to contribute more than the fund of \$1.5 million that it has established, the amount of \$260,000 previously spent, and the time and resources of its staff. He maintained that access to funds should not be the driving force in making the determination, but the efficacy of the intervention.

The Region and the Authority will undoubtedly make a substantial contribution to the hearing. However, with a combined 1991 revenue of \$463.5 million, we find that this applicant is ineligible for funding. We are far from satisfied that it "does not have sufficient financial resources to enable it to adequately represent" its interests, in accordance with s.7(2)(c) of the IFPA.

We have not used the Region's decision to establish a \$1.5 million fund as evidence that it does not need funding. Had it not established this fund or offered to contribute anything towards its intervention, we would nevertheless have reached the same conclusion about the financial resources of the Region/Authority and their eligibility for funding.

8. The Application of the Town

According to its 1991 financial statements, the Town had assets of \$17.2 million, reserves and fund balances of \$11.9 million, current and capital expenditures of \$13.5 million, and net municipal revenue of \$9.6 million. Its current and capital expenditures for environmental services totalled \$3.7 million. In a Budget Projection, anticipated revenue was \$6.4 million for 1992 and \$7.1 million for 1993.

Mr. Pinelli emphasized that the Town is facing a very recent claim (along with the Region) in the Ontario Court for \$6.3 million, although he was hopeful that the Town would not be found liable. Mr. Martin raised a question about an item on p.6 in the 1993 Operating Budget Summary (Exhibit 4, tab 6), a reserve of \$28,000 entitled "Steetley Reserve". This reserve was apparently established to assist with the cost of the Town's representation in these proceedings, yet no financial contribution was included in the Town's application. Mr. Pinelli advised that this reserve has been entirely reallocated to another unrelated reserve fund, and is therefore now unavailable. Mr. Martin submitted that the Town would have known about the proposed undertaking since 1988, at the latest, and could have been setting aside reserve funds from its annual revenues since that time.

The Town's claim for \$205,601.28 (net of GST rebate) involves legal representation throughout the hearing. There is no contribution listed in the application, although Mr. Pinelli filed a letter from the Town (Exhibit 7) indicating that as at February 1, 1993, the Town had spent \$79,604 for its "gross costs" related to this undertaking, including legal fees and consultants, but excluding the value of the staff time of the Town's employees. The proposed legal fees of

\$192,185.38 include 1,750 hours for senior counsel, 250 hours for a student and 10% for legal disbursements.

The proponent submitted that the Town should shelter under the umbrella of the Region and the Authority. It maintained that the Town does not require representation throughout the hearing. The Region can cover its concerns on most issues. Although it wishes to pursue a land use planning issue which is distinct from the other issues which the Region/Authority will be covering, the hearing time required to deal with that issue should not be lengthy. Ms. Spoel submitted that 10 days ought to suffice. The Town should become a part-time party. Mr. Martin submitted that the reserve of \$28,000 would have gone a long way toward paying for the Town's case on this issue.

The position of the MOE is that there is no independent role for the Town to play throughout the hearing, because its interests are no different than those of the Region/Authority and GASP.

We are satisfied that for all of the issues with which it is concerned, with the possible exception of the official plan and zoning by-law issue, the Town does not require a separate representation of its interests, as required by s.7(2)(b). We agree that the Town should have joined with the umbrella group of the Region and the Authority for joint legal representation with respect to all of its other issues. In that respect, we find that s.7(2)(f) has not been satisfied. Given the size of its annual budget, we find that the Town is capable of financing its own intervention with respect to the land use planning issues, and is therefore ineligible for funding under s.7(2)(c).

9. The Application of GASP

GASP's material indicates that it spent \$7,694 in 1991 and \$10,339 in 1992 on matters involving the proponent's operations, although there is no indication that the expenditure of these funds was related to the South Quarry project. At the end of 1992 it had funds on hand of \$30,998, but owed \$6,735 of that amount to its counsel for preparation and attendances related to this proceeding (preliminary, funding and main hearing). According to its financial statements, it has \$27,265 available at the present time (retained earnings of \$24,263 at the end of 1992, and net revenue of \$3,002 thus far in 1993).

GASP's request for \$397,164.28 (after deducting its proposed contribution of \$24,998) is to permit it to retain legal counsel to represent it throughout the hearing, and to retain the services

of several consultants. The component for legal fees, \$182,334.96, is based on intermediate counsel at 1,750 hours, a law clerk at 1,000 hours and legal disbursements calculated at 10% of legal fees. The component for consultants, \$218,427.32, is comprised of the following:

Area	Hours	Rates	Disb.	Total
EA Process	481	\$30-\$284	7.7%	\$57,360.22
Hydrogeology/Engineering	610	\$240-370	3.1%	\$52,943.60
Public Consultation & Social Impact Assessment	462.5	\$100	9.5%	\$54,195.50
Ecological Systems Assessment (fisheries, plant & wildlife)	180	\$130	8.5%	\$27,178.00
Traffic	200	\$75-\$125	8.7%	\$26,750.00

Mr. Pickfield submitted that his client's concerns cannot be addressed by the Region in any way. GASP wants to put forward its own perspective at the hearing.

Mr. Lederer submitted that GASP is absolutely opposed to the undertaking, whereas the Region has a more open mind. This demonstrates the potential for conflict, justifying funding of both applicants.

In a letter to the intervenors (Exhibit 3) the proponent conceded that GASP had complied with all of the criteria in s.7(2) of the IFPA except for s.7(2)(f). Ms. Spoel submitted that GASP requires separate representation, and should be awarded funding for full-time legal representation.

We are satisfied that GASP is eligible for funding, having regard to the criteria listed in s.7(1) and s.7(2) of the IFPA.

(a) Legal Representation

We have concluded that it is appropriate to provide GASP with funding so that it can have legal representation throughout the entire pre-hearing and hearing process. In addition to preparation for and attendance at the hearing, we would expect that counsel will also be involved with negotiation sessions, drafting and exchanging conditions of approval, etc. However, we are not persuaded that the entire claim of \$182,334.96 can be justified.

The application identifies 100 days of hearing, for 10 hours/day, at the intermediate legal aid counsel rate of \$75.38/hour. For preparation, 100 days, at 7.5 hours/day, are claimed. In addition, there is a claim for 1,000 hours for a law clerk at the tariff rate of \$23. Mr. Pickfield indicated that intense preparation during a hearing justifies the allocation of 10 hours/day. The law clerk is needed to organize the file, coordinate the consultants and clients, assist with organization during the pre-hearing phase, and attend with counsel during the hearing to assist him with file organization and communication with consultants and clients.

Ms. Spoel submitted that a reasonable allowance of time for counsel is 8 hours/day during preparation and hearing days, with a time budget of 80 days for the hearing, as indicated by the Board. The proponent is opposed to any allowance for the law clerk. Ms. Spoel advised GASP by letter (Exhibit 3) that the proponent would not object if funds allocated for counsel "are partially used for assistance by a law clerk, but the amount awarded should not exceed this." Mr. Pickfield replied that the law clerk will serve a different but necessary function than counsel, and at a much lower cost.

The procedural directions indicate a 7 hour hearing day, including the lunch break (9:30 am to 4:30 pm). We are prepared to accept the time budget for counsel proposed by the proponent (1,600 hours). The allowance of 8 hours per hearing day provides an additional two hours each day beyond the scheduled 6 hours of hearing time. Although more preparation time might be required throughout the hearing, most of the 800 hours (the equivalent of 4.6 months at 40 hours/week) of preparation time will be available for that purpose. In addition, we would allow three days for the preliminary and funding hearings, and three additional days for preparation for these attendances. The total cost for counsel will therefore be $1,648 \text{ hours} \times \$75.38 = \$124,226.24$.

In coming to this result, we have assumed that Mr. Pickfield will be provided with full cooperation by the other parties during the pre-hearing and hearing stages.

With respect to the law clerk, it appears that this person will be acting, in part, as a coordinator. The time requested would be equivalent to 125 days at 8 hours/day. We believe that the time claimed is excessive. Although we understand the need of counsel for administrative assistance, some of the functions described by Mr. Pickfield can probably be served by his office staff. In addition, we would expect that counsel will receive volunteer assistance during the pre-hearing and hearing stages from the members of GASP. We have therefore allocated 20% of counsel's

time allotment, or 330 hours, for the services of a law clerk. The award for this item will be $330 \text{ hours} \times \$23 = \$7,590$.

The legal aid tariff provides a reduced fee for travel time. It appears that the hourly rates during travel are reduced to 64%. The intermediate counsel fee for travel is \$48.37 and the law clerk rate is \$14.72. Although these rates may appear meagre, s.7(3)(a) of the IFPA requires that they be applied. We have not made a separate calculation for time spent in travel, but would expect that invoices for legal services will segregate travel time and bill it at the appropriate rates.

With respect to legal disbursements, the proponent has consented to an award calculated at 10% of fees, and GASP's application has adopted this approach. We therefore calculate disbursements to be $\$131,816.24 \times 10\% = \$13,181.62$.

In summary, the award for legal representation, not including GST, is:

Intermediate counsel	\$124,226.24
Law clerk	\$7,590.00
Disbursements	<u>\$13,182.62</u>
	\$144,997.86

(b) Consultants

Mr. Pickfield made the following general submissions with respect to the need of his client for funding for its own consultants:

- a) GASP has agreed to coordinate the work of its consultants with those of the Region, but it cannot share consultants;
- b) GASP will avoid duplication with evidence provided by the Town and Region, but sharing cannot occur at the pre-hearing stage;
- c) since there is not much time available before the commencement of the hearing, and the issues are numerous and complex, it is necessary for GASP to have its own consultants, apart from the those of the Region;
- d) the priorities for the work of consultants must be set by the clients;

- e) GASP took considerable time identifying the consultants it wishes to retain, and started out with a much longer list.

Ms. Hall's response was that GASP may want the convenience of having access to its own experts, but that is not a compelling argument for funding a second set of consultants.

Ms. Spoel submitted that GASP does not need a full suite of consultants. She indicated that there is no reason why one consultant cannot meet with several parties to determine the nature of their concerns and include them in its review of the proponent's material. In general terms, the proposed work plans for GASP's consultants were regarded by the proponent as reasonable. However, Ms. Spoel expressed the concern that the time allocated might not be spent efficiently if the consultants were expected to be educating the members of GASP and dealing with their concerns, rather than contributing to the hearing.

We are unclear as to the proponent's position with respect to funding consultants for GASP in some areas. In the context of consultants, Mr. Martin submitted that "there are some areas where we believe separate representation would not be outrageous ... but we do have difficulties" (Transcript vol.2, p.431). He went on to say that "we are not proposing to agree with the *entire* application" of GASP (emphasis added).

In her written commentary to the parties (Exhibit 3), setting out the proponent's position, Ms. Spoel indicated in section 7 that there is overlap between the consultants proposed by GASP and the Region in several areas, including EA process issues, social and community impacts, traffic impacts and land use planning issues. The letter then goes on to state:

While Steetley concedes that GASP may have a separate interest from the municipalities on the issues of social and community impacts, traffic and land use planning, they do not with respect to the environmental assessment process, hydrogeology, site design and operations and impacts on the natural environment. Steetley objects to funding two sets of witnesses *on these issues*. (emphasis added)

In her submissions, Ms. Spoel stated:

Now, we've conceded that with respect to matters such as land use planning, traffic and social impact assessment, this may be a matter where expert witnesses for those parties may take a somewhat different approach to their task because of a particular situation of those parties. (Transcript vol.2, p.436) ...

[W]e do not think that there is any justification before you to fund two sets of consultants on the issues of hydrogeology and site design and operations, social impact, ... EA process or impacts on the natural environment. ... I do concede that because of the specific interests of some of the parties under the GASP umbrella that traffic is a specific concern to them. (p.478)

She went on to state that GASP's consultants have combined their work on EA process and land use planning, and although the proponent concedes that there may be a separate role for a consultant on land use planning, "we do not want to fund two sets of environmental assessment consultants" (p.479). After stating the proponent's primary position that the Region should not be funded, she went on to say:

But if you are going to fund the Region, the Region should not be funded for EA process because that's going to be covered by GASP along with land use planning. (p.479)

We have considered the above references in an effort to determine whether the proponent is consenting to fund some of GASP's consultants, and if so, which ones. We have concluded that the proponent is:

- a) opposed to funding GASP in the areas of hydrogeology, site design and operations, and natural environment impacts, particularly if we were to also fund the Region in these areas;
- b) opposed to funding for the EA process, assuming that the Region is awarded funding for this area, or proceeds with it on its own;
- c) neither opposing nor supporting funding for GASP in the area of land use planning, traffic and social impact assessment, even though there is overlap, because it concedes that GASP may have a separate interest;

The individual areas of consultant funding are discussed in the five sections below.

(1) Environmental Assessment and Land Use Planning

GASP has claimed \$57,360.22, involving 481 hours of consulting time, for this category. The disbursements claimed equal 7.7% of the fees. Mr. Pickfield submitted that:

- a) the Region's approach to the issue of the EA process might be different than that of GASP;
- b) since this is the first EA private-sector new landfill hearing, the assessment process issue is quite important, as the Board's decision will establish the ground rules for future applications;
- c) over the years, the members of GASP have developed a store of ideas with respect to this issue, and they need the opportunity to "down-load" them onto their consultants, who have included time in their work-plans for these meetings;
- d) GASP wishes to study a larger area than that examined by the proponent.

With respect to the issues of EA process, planning, and compliance with the EAA, the MOE will be calling as a witness its reviewer from the Assessment Branch. Ms. Hall acknowledged that in the area of EA process, GASP might have a different perspective than the Region.

Counsel for Taro Aggregates, a part-time party, indicated at the preliminary hearing that he would be calling evidence on the issue of the need for this undertaking.

Mr. Pinelli advised that the Town has a particular interest in the land use planning issue, as its official plan and zoning by-law will be examined by the Board. Although funding has been denied the Town, we expect that it will be leading evidence on this issue.

The Region/Authority submitted a budget for 660 hours (or 82.5 days, at 8 hours/day) of consulting time to deal with the issue of the EA process. Mr. Lederer indicated that this is a major issue for his clients. He also submitted that this is a field which is value-laden, and that there can be differing points of view here among consultants. In addition, these intervenors have requested funding for 337.5 hours of consulting time to deal with land use planning. Although funding was denied them, we expect that they will proceed to call evidence on this matter at the hearing.

The proponent is opposed to funding for consultants in the area of EA process. There is no need for more than one consultant to assist the parties in opposition. Ms. Spoel submitted that a consultant should be retained to give an expert opinion on whether the EA process has been dealt with satisfactorily. It is counsel's job to argue how the evidence is to be interpreted, but she maintained that experts should not be cast in the role of advocates.

However, with respect to land use planning, she acknowledged that GASP might have a separate interest.

Taking into account the fact that evidence will be called with respect to EA issues by the MOE, Taro Aggregates and the Region/Authority, we have decided to allow no funding for this area. In our view, there is no need to fund GASP so that it too can call experts in this area. Nor do we believe that this field is so technical that GASP needs to have its own consultant in order to play a constructive role in cross-examination on this issue. This is not a field which is comprehensible only to specialized consultants. Mr. Lederer's argument that the area is quite value-laden brings into question the benefit of having several consultants, at great cost, debate which points of view are most appropriate. It is important for the Board to know how the proponent's work was carried out, and how and why it could have, or should have, been done differently. As Ms. Spoel indicated, counsel can provide assistance to the Board in argument on this issue.

In view of and our expectation that the Region, Authority and Town will call evidence on this issue, we are not prepared to award funding for this part of the application either.

(2) Hydrogeology and Landfill Engineering

This claim is for \$52,943.60, involving 610 hours of consulting time, and disbursements equal to 3.1% of fees.

Mr. Pickfield submitted that the Region will be doing a great deal more study in this area than GASP intends to do. The coordination with the Region in this area will begin immediately.

The Region/Authority submitted a budget for 3,772 hours (or 471.5 days) of consulting time to study and call evidence with respect to hydrogeology and design and operation of the site. Although funding has been denied to these intervenors, we expect that they will nevertheless be calling evidence in this area.

The MOE will be calling a panel of three engineers to testify at the hearing with respect to landfill design, hydrogeology, leachate collection and site closure. Ms. Hall submitted that this undertaking is unprecedented because of the high degree of engineering needed for the site. She said that it was beyond the practical experience of MOE staff.

Ms. Orr advised that the NEC is interested in calling evidence regarding hydrogeology and geology, to deal with issues such as leachate collection, ground water, stressing of the quarry floor and the threat of pop-ups.

Ms. Spoel maintained that the hydrogeology of the area, and the proposed design and operation of the site, remain the same no matter what point of view a party happens to have. The consultant's role is to assist the Board to determine whether the landfill will function properly. Ms. Spoel also submitted that, in any event, GASP's concerns in this area are identical to those of the other parties in opposition. There is therefore no need for a second consultant.

We recognize that these aspects of the proposed undertaking are of great importance, particularly in light of the untested combination of technical elements of the landfill design. However, with technical evidence on the subject being called by the MOE, NEC and the Region, we are satisfied that no separate representation of this interest is necessary.

(3) Public Consultation & Social Impact Assessment

The total claim in this category is \$54,195 for 462.5 hours of consulting time and disbursements of 9.5%.

Mr. Pickfield submitted that GASP feels that original data collection, listed as task #1 in the work plan of the consultants (Exhibit 1, tab 9, p.4), and entitled "Proposed Social Impact Assessment Research", is necessary. The cost of this fieldwork is identified in the work plan budget as \$16,500. Since the proponent disagrees with the need for this work, GASP will not be able to obtain this information through interrogatories.

The Region/Authority submitted a budget for 482 hours of consulting time to study and call evidence with respect to public consultation and social impacts. In addition, 733 hours were allocated specifically for economic impacts, and 625 hours for the impacts on the recreational use of the Authority's lands, and the revenues derived therefrom. Although funding was denied to these intervenors, we expect that they will be calling evidence with respect to these issues.

Ms. Hall advised that the MOE will be calling as witnesses two people from its fiscal planning branch to deal with social and economic impacts.

The proponent is opposed to funding field-work. Mr. Martin submitted that this issue should be left to the Board to resolve during the hearing. With respect to the balance of the work in this area, we have concluded that the proponent takes a neutral position.

As it appears that independent evidence will be called by the Region, the Authority and the MOE with respect to social impact assessment (and by the Region with respect to public consultation), we have concluded that this is an area for which no separate representation is required.

(4) Ecological Systems Assessment, Wildlife, Plantlife and Aquatic Biology

In this category, GASP has requested \$27,178 for 180 hours of consulting time and disbursements of 8.5%.

Mr. Pickfield submitted that the work plan in this area includes two days of field inspection, at a cost of \$1,950. This fieldwork will not be carried out by the proponent because the proponent disagrees with the need for this work.

The Region/Authority applied for funding for 615 hours of consulting time to study and call witnesses with respect to impacts on the aquatic and terrestrial environments. Although funding was denied, we expect that these parties will proceed to call evidence in these areas.

Ms. Hall submitted that she could discern no difference between the interests of GASP and the Region with respect to impacts on the natural environment. She advised that the MOE will be calling evidence with respect to regional biology.

Mr. Martin submitted that the issue of the need for field-work should be resolved by the Board during the hearing.

We agree with Mr. Martin that the request for field-work should not be accepted by the Panel. In view of the independent evidence expected from the MOE and the Region/Authority, we do not perceive any need at this time for the funding of GASP's consultants in this area.

(5) Traffic Impacts

The cost of the proposed work in this area is \$26,750 for 200 hours of consulting time and disbursements of 8.7%.

Part of the Region/Authority's funding application under the category of environmental impacts was intended for consultants in this field. The budget included \$5,190 for technical review and 10 days of hearing time for the witness. Although funding was denied, we expect that these parties will proceed with this evidence.

Ms. Hall advised that the MOE will call a technical witness with respect to the issue of traffic.

This is one of those areas for which we have concluded that the proponent's position is neutral, notwithstanding Ms. Spoel's concession that traffic would be of special concern to some members of the GASP umbrella. Nevertheless, in light of the independent evidence to be called on this subject by the MOE and the Region, we can find no need for the separate representation of GASP's interest in this area.

(c) Contribution

Mr. Pickfield submitted that although GASP has raised approximately \$31,000, it wishes to contribute \$24,998 and hold back the remainder for such things as current operating expenses, other issues the group is dealing with, potential hearings in the future, legal and consulting costs overruns, and potential appeals.

Ms. Spoel submitted that GASP should be expected to make a larger contribution. In her written commentary (Exhibit 3), she maintained that all of GASP's funds should be applied against the funding award "as there is no proposal for continued fund-raising during the course of this hearing and a decision on costs of this hearing will likely be made before any appeals need be funded."

In our view, the contribution proposed by GASP is reasonable. The members of GASP have apparently contributed to their intervention in a number of ways, and have made genuine efforts to raise funds. We recognize that this is not the only environmental issue with which the group has been dealing. In addition, the top-up of legal fees constitutes a liability which we are

prepared to recognize. We fully expect that GASP will continue with its fund-raising efforts, but we would anticipate that its intervention in this hearing will create considerable additional expense not covered by this award.

In submitting claims for payment pursuant to this award, GASP will be required to make its contribution by paying a portion of each invoice. That portion is calculated at 16.1%, and is based upon the proportion of the required contribution to the total award (\$24,998 / \$155,147.71).

(d) GST

GST (Goods and Services Tax) of 7% has been added to the total award of \$144,997.86. According to par.13 of its application (Exhibit 1), GASP is not a GST registrant and is therefore not entitled to a rebate or credit for the amounts of GST which it pays. In the event that GASP is able to register and become entitled to tax rebates, it should provide credit to the proponent for the full amount of the rebates it receives.

10. Conclusion

In making our findings with respect to GASP's consulting claims, and the counsel time required by Mr. Pickfield, we have assumed that at the very least, the Region, Authority, Town, MOE, NEC and Taro Aggregates (Taro is represented by the same law firm as GASP) will provide GASP's counsel with liberal access to their consultants and related documentation in order that he will be in a position to adequately prepare for and participate in the hearing. Without that access GASP's contribution to the hearing could be hampered.

It is our view that the extent to which this access is extended to Mr. Pickfield should be relevant to a consideration of costs under par.20(b)(vii) of the procedural directions (the cooperation of parties "with one another in retaining common experts for the purpose of giving evidence before the Board").

In reaching our conclusions with respect to GASP's claims for consultants, we have found it necessary to make many predictions about the roles that the other parties will play during the hearing. We recognize that these predictions may prove to be incorrect, since parties' roles

may change as a result of this funding decision, or various other factors. In the event that such changes do arise, it is our view that any modifications to the funding awarded herein should be made by the Board pursuant to s.12 of the IFPA.

Except as otherwise indicated, the funding provided by this decision is intended to take GASP through the entire hearing, based on the Board's estimate of 80 hearing days.

DECISION

1. Steetley Quarry Products Inc. is named the funding proponent.
2. Intervenor funding in the amount of \$155,147.71 is awarded to Greensville Against Serious Pollution Inc. (GASP) to be allocated in the manner set out in Schedule A which is attached to and forms part of this Decision.
3. The applications of the Corporation of the Regional Municipality of Hamilton-Wentworth, the Hamilton Region Conservation Authority and the Corporation of the Town of Flamborough are denied.
4. Peter Pickfield and the law firm of Turkstra Garrod Hodgson are responsible for accounting for the funds awarded. The amounts awarded shall only be used for the purposes set out in Schedule A and the Reasons for Decision.
5. Claims for funds pursuant to this award shall be made in accordance with the Environmental Assessment Board's *General Principles for the Submission of Claims*.
6. When submitting claims for payment, GASP shall acknowledge its responsibility for payment of the portion it is required to contribute under this Decision, namely, 16.1% of the amount of each invoice.
7. Claims for funds are to be submitted monthly to the Finance and Capital Management Branch, Ministry of the Environment using the *Request for Funds Form* provided.
8. Any GST rebates received by GASP and not taken into account in this Decision shall be returned to the Finance and Capital Management Branch for remittance to the proponent.
9. At the end of the hearing or the end of GASP's participation in the hearing, GASP shall submit a financial report to the Hearing Panel and account for all funds received by way of intervenor funding.

10. Financial materials filed in these proceedings are to be used only by the Funding Panel and parties to the funding proceedings and only for the purpose of these proceedings. These financial materials are not to be used by any person for any other purpose.

DATED AT TORONTO this 25th day of MARCH, 1993.

"Alan D. Levy"

Alan D. Levy

"Douglas S. Colbourne"

Douglas S. Colbourne

CH-91-08(F) Steetley Quarry Products Inc. – South Quarry Landfill Development

Funding Allocation

Schedule A

Intervenor: Greenville Against Serious Pollution (GASP)

<u>LEGAL</u>	<u>HR.</u>	<u>RATE/HR</u>	<u>TOTAL LEGAL FEES</u>	<u>GST @ 7%</u>	<u>TOTAL</u>
		\$	\$	\$	\$
Senior counsel					
Intermediate counsel	1648	75.38	124,226.24	8,695.84	132,922.08
Junior counsel					
Law clerk/student	330	23.00	7,590.00	531.30	8,121.30
Disbursements (10%)			13,181.62	922.71	14,104.33
Total Legal			<u>144,997.86</u>	<u>10,149.85</u>	<u>155,147.71</u>

<u>EXPERTS AREA OF STUDY</u>	<u>HR.</u>	<u>RATE/HR</u>	<u>EXPERT FEES</u>	<u>DISBUR.</u>	<u>GST @ 7% FEE + DISB</u>	<u>TOTAL</u>
		\$	\$	\$	\$	\$
Total (Experts)			<u>0.00</u>	<u>0.00</u>	<u>0.00</u>	<u>0.00</u>

<u>INTERVENOR DISBURSEMENTS</u>	<u>DISBUR.</u>	<u>GST @ 7%</u>	<u>TOTAL</u>
	\$	\$	\$
Photocopying			
Printing			
Transcripts			
Total Intervenor Disbursements	<u>0.00</u>	<u>0.00</u>	<u>0.00</u>

Sub-Total Allocation:	155,147.71
Intervenor's Contribution	(24,998.00)

TOTAL ALLOCATION: 130,149.71

PERSON/FIRM RESPONSIBLE FOR FUNDS: Peter Pickfield
 Turkstra Garrod Hodgson
 221 Woolwich Street
 Guelph, Ont. N1H 3V4
 Tel.: (519) 837-0500
 Fax: 763-2204

Note: GASP will be required to pay 16.1% of each invoice submitted.

Summary of Funding Applications

Intervenor	Legal Fees and Disbursements	Expert fees and Disbursements	General Disbursements	Other source of funds	GST Rebate	Net Application
The Region and the Conservation Authority	371,322.55	807,189.04	10,700.00	0.00	44,492.23	1,144,719.36
The Corporation of the Town of Flamborough	192,185.38	0.00	21,400.00	0.00	7,984.10	213,585.38
Greensville Against Serious Pollution (GASP)	182,334.96	218,427.32	21,400.00	24,998.00	0.00	397,164.28
Totals:	<u>745,842.89</u>	<u>1,025,616.36</u>	<u>53,500.00</u>	<u>24,998.00</u>	<u>52,476.33</u>	<u>1,755,469.02</u>

STEETLEY QUARRY PRODUCTS INC.**EXHIBIT LIST**

	Date Filed	Filed By
1. Funding Application by GASP - 25.1.93	Feb 15	GASP
2. Letter from Mr. Pickfield to Mr. Martin - 28.1.93	Feb 15	GASP
3. Letter from Ms. Spoel to all Counsel dated 10.2.93	Feb 15	GASP
4. Funding Application by Town of Flamborough	Feb 15	Town
5. Supplementary Submission with regard to Question # 9	Feb 15	Town
6. Statement of Claim: West Flamborough et al v. Town of Flamborough et al #36970/92, Ontario Court (General Division), 14.1.93	Feb 15	Town
7. Letter from Town of Flamborough 12.2.93 to Mr. Pinelli	Feb 15	Town
8. Resolution of General Government Committee of Town of Flamborough - Oct 5/92 adopted by Council	Feb 15	Town
9. The Region's Funding Application	Feb 15	Region
10. The Region's Supplementary Material	Feb 15	Region
11. 1991 Reserve Reports for Region		

CA20NCH 93C08

Ontario. The Consolidated Hearings Act, 1981.
CH-91-08(F)

STRETLEY QUARRY PRODUCTS INC. SOUTH QUARRY LAI
DEVELOPMENT DECISION AND REASONS FOR DECISION

**RESOURCE CENTRE
INST. FOR ENVIRON'L. STUDIES
UNIVERSITY OF TORONTO**



